

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS**

**HOUSTON DIVISION**

ROGER FOUNTAIN,

Plaintiff,

v.

OPORTUN, INC.

Defendants.

Civil Docket No.

**DEFENDANT OPORTUN INC.'S NOTICE OF REMOVAL**

Defendant Oportun, Inc. ("Defendant"), by and through its undersigned counsel, pursuant to 28 U.S.C. §§ 1441 and 1331, hereby files this Notice of Removal of this action from the Justice of the Peace, Precinct 5, Place 1, in Harris County, Texas, to the United States District Court for the Southern District of Texas. In support thereof, Defendant states as follows:

1. Oportun, Inc. is the only named Defendant in Cause No. 215100181847, currently pending in the Justice of the Peace, Precinct 5, Place 1, in Harris County, Texas.
2. Plaintiff's Original Petition ("Petition") is attached to this Notice of Removal as Exhibit A-1, along with the Citation.
3. In his Petition, Plaintiff alleges violations of the Telephone Consumer Protection Act, which is a federal statute codified in 47 U.S.C. § 227. Plaintiff has also pleaded a supposed claim of harassment.
4. Plaintiff seeks to recover \$20,000.00 in statutory damages, punitive damages, and damages for emotional distress.

5. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1331. Section 1331 provides that federal “district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.”<sup>1</sup> Accordingly, this Court has federal question jurisdiction because Plaintiff asserts a claim under the Telephone Consumer Protection Act, which is a federal statute.<sup>2</sup>

6. “The presence or absence of federal-question jurisdiction is governed by the ‘well-pleaded complaint rule,’ which provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff’s properly pleaded complaint. The rule makes the plaintiff the master of the claim; he or she may avoid federal jurisdiction by exclusive reliance on state law.”<sup>3</sup>

7. Because this Court has original jurisdiction over a federal question, the Court also has supplemental jurisdiction over Plaintiff’s remaining supposed claim of harassment pursuant to 28 U.S.C. § 1367.

8. Pursuant to 28 U.S.C. §§ 1331 and 1441, Defendant has the right to remove this action from the Justice of the Peace, Precinct 5, Place 1, in Harris County, Texas, to the United States District Court for the Southern District of Texas, based on federal question jurisdiction. Venue is proper in this Court pursuant to 28 U.S.C. § 1391.

9. Oportun, Inc. was served with the petition and citation on August 20, 2021. As such, Defendant Oportun, Inc.’s Notice of Removal is timely.

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<sup>1</sup> 28 U.S.C. § 1331.

<sup>2</sup> See 47 U.S.C. § 227.

<sup>3</sup> *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987) (internal citations omitted).

10. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders served upon Defendant (or accessed by Defendant) are attached to this Notice of Removal as Exhibit A-2.

11. Pursuant to 28 U.S.C. § 1446(d), Defendant gave notice promptly upon filing the original Notice of Removal to all parties of record and to the Clerk of the Justice of the Peace, Precinct 5, Place 1, in Harris County, Texas. A copy of the notice is attached to this Notice of Removal as Exhibit A-3.

12. Pursuant to Local Rule 81, the following is an index of matters being filed in this Notice of Removal:

- A-1. Plaintiff's Original Petition;
- A-2. Copies of all process, pleadings, and orders in the state court action; and
- A-3. State Court Notice of Filing the Notice of Removal.

Further, the list of the parties and counsel of record are as follows:

Roger Fountain  
8546 Hwy 6 N #419  
Houston, TX 77095  
(972) 890-4059  
[rcfountain@live.com](mailto:rcfountain@live.com)  
*Pro Se Plaintiff*

C. Dunham Biles  
Texas Bar No. 24042407  
[cbiles@foxrothschild.com](mailto:cbiles@foxrothschild.com)  
Adam Ragan  
Texas Bar No. 24079172  
[aragan@foxrothschild.com](mailto:aragan@foxrothschild.com)  
FOX ROTHSCILD LLP  
Saint Ann Court  
2501 N. Harwood St., Suite 1800  
Dallas, TX 75201  
Phone: (972) 991-0889  
Fax: (972) 404-0516  
*Attorneys for Defendant*

WHEREFORE, please take notice that this action should proceed in the United States District Court for the Southern District of Texas as an action properly removed pursuant to 28 U.S.C. § 1441.

Respectfully submitted,

/s/ C. Dunham Biles

C. Dunham Biles

Texas Bar No. 24042407

[cbiles@foxrothschild.com](mailto:cbiles@foxrothschild.com)

Adam C. Ragan

Texas Bar No. 24079172

[aragan@foxrothschild.com](mailto:aragan@foxrothschild.com)

FOX ROTHSCILD LLP

Saint Ann Court

2501 N. Harwood St., Suite 1800

Dallas, TX 75201

Phone: (972) 991-0889

Fax: (972) 404-0516

*Attorneys for Defendant*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 3<sup>rd</sup> day of September, 2021, a copy of the foregoing was served via first-class certified mail and e-mail upon all parties and counsel of record.

Roger Fountain

8546 Hwy 6 N #419

Houston, TX 77095

(972) 890-4059

[rcfountain@live.com](mailto:rcfountain@live.com)

*Pro Se Plaintiff*

/s/ C. Dunham Biles

C. Dunham Biles

# EXHIBIT A-1



## Small Claims Petition

NO. 21S100181847

ROGER FOUNTAIN § In the Justice Court of Harris County, Texas  
 Plaintiff(s) § Precinct \_\_\_\_\_ Place \_\_\_\_\_  
 §  
 vs. §  
OPORTUN, INC. §  
 Defendant(s) §  
 Plaintiff: ROGER FOUNTAIN §

Describe the legal nature of the plaintiff (e.g., individual, sole proprietorship, partnership, corporation)

INDIVIDUAL

Defendant: OPORTUN, INC.Address: 2 CIRCLE STAR WAYCity: SAN CARLOSState: CAZip: 94070Date of Birth (if applicable): N/A

Describe the legal nature of the defendant (e.g., individual, sole proprietorship, partnership, corporation)

CORPORATION

\*Defendant may be served by serving CORPORATION SERVICE COMPANY - R/A  
 (state the name of the defendant if defendant is an individual, or state the name and title of the person who is authorized to receive service of process for the defendant if defendant is a partnership, limited partnership, corporation, or limited liability company), who may be served at

1201 HAYS ST, TALLAHASSEE, FL 32301-2525  
 (state the address for service of process).

The defendant's usual place of business or residence, or other place where defendant can probably be found is

2 CIRCLE STAR WAY, SAN CARLOS, CA 94070

## Cause of Action

(State the cause of action in plain and concise language, sufficient to give fair notice of the claim and to provide enough information to enable the defendant to prepare a defense. You may include information showing venue is proper in the Justice of the Peace Precinct in which you are filing. If you are seeking personal property, you must describe the property and state the value of the property.)

VIOLATIONS OF THE TCPA AND HARASSMENT

Relief Requested (Describe the relief you are requesting, itemizing the amount of damages you are seeking.)

\$20,000.00 IN STATUTORY DAMAGES, PUNITIVE DAMAGES, AND EMOTIONAL DISTRESS

Respectfully submitted,

Signature of Plaintiff or Plaintiff's Attorney of Record

Printed Name: ROGER FOUNTAIN  
State Bar No.Address: 8546 HWY 6 N. #419 HOUSTON, TX 77095Telephone: 972-890-4059

Fax Number:

E-Mail Address: rfountain@live.com☒ Plaintiff consents to the e-mail service of the answer and any other motions or pleadings to this e-mail address.

# EXHIBIT A-2



Citation - Small Claims Money Damages

Tracking Number:

Case Number: 215100181847

Roger Fountain  
Plaintiff  
vs.  
Oportun, Inc.  
Defendant

§  
§  
§  
§  
§  
§  
§

In the Justice Court  
Harris County, Texas  
Precinct 5, Place 1  
6000 Chimney Rock Road  
Suite 102  
Houston, TX 77081  
713-274-8700  
[www.jp.hctx.net](http://www.jp.hctx.net)

## Citation (Small Claims Case)

THE STATE OF TEXAS  
COUNTY OF HARRIS

TO: ANY SHERIFF, CONSTABLE, PROCESS SERVER CERTIFIED UNDER ORDER OF THE SUPREME COURT,  
OTHER PERSON AUTHORIZED BY COURT ORDER, OR CLERK:

Deliver this citation, together with a copy of the petition, to:

Oportun, Inc.  
By Serving Corporation Service Company – R/A  
1201 Hays St,  
Tallahassee, FL 32301-2525

**ALTERNATIVE SERVICE ADDRESS**

2 Circle Star Way  
San Carlos, CA 94070

**TO THE DEFENDANT:**

You have been sued. You are commanded to appear by filing a written answer to the petition filed by Plaintiff with the Clerk of the Court on or before the end of the 14<sup>th</sup> day after the date of service of this citation. If you fail to file an answer as required, a judgment by default may be rendered for the relief demanded in the petition.

Date Petition Filed: 06/25/2021

Nature of demand made by Plaintiff(s): money owed in the amount of \$20,000.00. A copy of the petition is attached.

**Notice**

You have been sued. You may employ an attorney to help you in defending against this lawsuit. But you are not required to employ an attorney. You or your attorney must file an answer with the court. Your answer is due by the end of the 14<sup>th</sup> day after the day you were served with these papers. If the 14<sup>th</sup> day is a Saturday, Sunday, or legal holiday, your answer is due by the end of the first day following the 14<sup>th</sup> day that is not a Saturday, Sunday, or legal holiday. Do not ignore these papers. If you do not file an answer by the due date, a default judgment may be taken against you. For further information, consult the Texas Rules of Civil Procedure, Part V, Rules of Practice in Justice Courts. A copy of the Rules is available at <http://www.jp.hctx.net/> or at the Justice Court.

Date: 7/6/2021



/s/ Dayanara Vargas

Clerk of the Court  
Harris County Justice Court  
Precinct 5, Place 1

Address of Plaintiff

8546 Hwy 6 N #419  
Houston TX 77095

**CERTIFIED MAIL® RECEIPT***Domestic Mail Only*For delivery information, visit our website at [www.usps.com](http://www.usps.com)®.**OFFICIAL USE**

Certified Mail Fee

\$

9.15

Extra Services &amp; Fees (check box, add fee as appropriate)

- ☐ Return Receipt (hardcopy) \$ 2.85
- ☐ Return Receipt (electronic) \$
- ☐ Certified Mail Restricted Delivery \$
- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postmark  
Here

Postage

\$

0.51

Total Postage and Fees

\$

12.51

Sent To

OPORTUN, INC Attn: Corporation Service Company

Street and Apt. No., or PO Box No.

1201 HAYS ST.

City, State, ZIP+4®

Tallahassee, FL 32301-2525

E525 4542 2000 0262 6T02 2970



■ A receipt (this portion of the Certified Mail label).

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■ Certified Mail service is *not* available for International mail.

■ Insurance coverage is *not* available for purchase with Certified Mail service. However, the purchase of Certified Mail service does not change the insurance coverage automatically included with certain Priority Mail items.

■ For an additional fee, and with a proper endorsement on the mailpiece, you may request the following services:

- Return receipt service, which provides a record of delivery (including the recipient's signature). You can request a hardcopy return receipt or an electronic version. For a hardcopy return receipt, complete PS Form 3811, *Domestic Return Receipt*; attach PS Form 3811 to your mailpiece;

for an electronic return receipt, see a retail associate for assistance. To receive a duplicate return receipt for no additional fee, present this USPS®-postmarked Certified Mail receipt to the retail associate.

- Restricted delivery service, which provides delivery to the addressee specified by name, or to the addressee's authorized agent.

- Adult signature service, which requires the signee to be at least 21 years of age (not available at retail).

- Adult signature restricted delivery service, which requires the signee to be at least 21 years of age and provides delivery to the addressee specified by name, or to the addressee's authorized agent (not available at retail).

■ To ensure that your Certified Mail receipt is accepted as legal proof of mailing, it should bear a USPS postmark. If you would like a postmark on this Certified Mail receipt, please present your Certified Mail item at a Post Office™ for postmarking. If you don't need a postmark on this Certified Mail receipt, detach the barcoded portion of this label, affix it to the mailpiece, apply appropriate postage, and deposit the mailpiece.

**IMPORTANT: Save this receipt for your records.**

# AMENDED

## Small Claims Petition

FILED  
JUDGE ISRAEL B. GARCIA, JR.  
PRECINCT 5, PLACE 1  
HARRIS COUNTY, TEXAS

NO. 215100181847

2021 JUL 14 PM 2:30

ROGER FOUNTAIN

Plaintiff(s)

vs.

OPERTUN, INC.

Defendant(s)

Plaintiff: ROGER FOUNTAIN

Describe the legal nature of the plaintiff (e.g., individual, sole proprietorship, partnership, corporation)

INDIVIDUAL

Defendant:

OPERTUN, INC.

Address:

2 CIRCLE STARWAY

City:

SAN CARLOS

State:

CA

Zip:

94070

Date of Birth (if applicable):

N/A

Describe the legal nature of the defendant (e.g., individual, sole proprietorship, partnership, corporation)

CORPORATION

\*Defendant may be served by serving

CORPORATION SERVICE COMPANY

(state the name of the defendant if defendant is an individual, or state the name and title of the person who is authorized to receive service of process for the defendant if defendant is a partnership, limited partnership, corporation, or limited liability company), who may be served at

1201 HAYS ST. TALLAHASSEE, FL 32301-2525

(state the address for service of process).

The defendant's usual place of business or residence, or other place where defendant can probably be found is

**Cause of Action**

(State the cause of action in plain and concise language, sufficient to give fair notice of the claim and to provide enough information to enable the defendant to prepare a defense. You may include information showing venue is proper in the Justice of the Peace Precinct in which you are filing. If you are seeking personal property, you must describe the property and state the value of the property.)

VIOLATIONS OF THE TCPA AND HARASSMENT**Relief Requested** (Describe the relief you are requesting, itemizing the amount of damages you are seeking.)\$20,000.00 IN STATUTORY DAMAGES, PUNITIVE DAMAGES AND EMOTIONAL DISTRESS

Respectfully submitted,

Signature of Plaintiff or Plaintiff's Attorney of Record

Printed Name:

ROGER FOUNTAIN

State Bar No.

Address:

8546 HWY 6 N# 419HOUSTON, TX 77095

Telephone:

972-890-4059

Fax Number:

E-Mail Address:

rfountain@live.com☒ Plaintiff consents to the e-mail service of the answer and any other motions or pleadings to this e-mail address.



Citation - Small Claims Money Damages

Tracking Number:

Case Number: 215100181847

Roger Fountain  
Plaintiff  
vs.  
OPORTUN, INC.  
Defendant

§  
§  
§  
§  
§  
§

In the Justice Court  
Harris County, Texas  
Precinct 5, Place 1  
6000 Chimney Rock Road  
Suite 102  
Houston, TX 77081  
713-274-8700  
[www.jp.hctx.net](http://www.jp.hctx.net)

**Citation (Small Claims Case)**

THE STATE OF TEXAS  
COUNTY OF HARRIS

**TO: ANY SHERIFF, CONSTABLE, PROCESS SERVER CERTIFIED UNDER ORDER OF THE SUPREME COURT,  
OTHER PERSON AUTHORIZED BY COURT ORDER, OR CLERK:**

Deliver this citation, together with a copy of the petition, to:

OPORTUN, INC. by serving Corporation Service Company  
1201 Hays St.  
Tallahassee, FL 32301-2525

**ALTERNATIVE SERVICE ADDRESS**

2 Circle Starway  
San Carlos, CA 94070

**TO THE DEFENDANT:**

**You have been sued. You are commanded to appear by filing a written answer to the petition filed by Plaintiff with the Clerk of the Court on or before the end of the 14<sup>th</sup> day after the date of service of this citation. If you fail to file an answer as required, a judgment by default may be rendered for the relief demanded in the petition.**

Date Petition Filed: 06/25/2021

Nature of demand made by Plaintiff(s): money owed in the amount of \$20,000.00. A copy of the petition is attached.

**Notice**

**You have been sued. You may employ an attorney to help you in defending against this lawsuit. But you are not required to employ an attorney. You or your attorney must file an answer with the court. Your answer is due by the end of the 14<sup>th</sup> day after the day you were served with these papers. If the 14<sup>th</sup> day is a Saturday, Sunday, or legal holiday, your answer is due by the end of the first day following the 14<sup>th</sup> day that is not a Saturday, Sunday, or legal holiday. Do not ignore these papers. If you do not file an answer by the due date, a default judgment may be taken against you. For further information, consult the Texas Rules of Civil Procedure, Part V, Rules of Practice in Justice Courts. A copy of the Rules is available at <http://www.jp.hctx.net/> or at the Justice Court.**

Date: 8/19/2021



/s/ Stacy Sustaita  
Clerk of the Court  
Harris County Justice Court  
Precinct 5, Place 1

Address of Plaintiff

8546 Hwy 6 N #419  
Houston TX 77095



## Justice of the Peace Courts Case Information

**Case Summary for 215100181847 as of September 2, 2021 3:03:48 PM :**

### General Case Information

**Case Number:** 215100181847  
**Court Info:** [Click here to visit court web site.](#)  
**Style of Case:** Roger Fountain vs. OPORTUN, INC.  
**Filed Date:** June 25, 2021  
**Days Old:** 69  
**Case Status:** Active  
**Disposition:**  
**Disposition Date:**  
**Judgment Date:**

### Civil Information

**Nature of Claim:** Small Claims  
**Claim Amount:** \$20,000.00



### Party Information

<b>Party Name:</b>	Fountain, Roger
<b>Party Type:</b>	Plaintiff

<b>Party Name:</b>	OPORTUN, INC.
<b>Party Type:</b>	Defendant

### Hearing Information

### Payment Information

<b>Payment Date:</b>	June 25, 2021
<b>Amount:</b>	\$64.00
<b>Payment Type:</b>	Mastercard/Visa
<b>Transaction Type:</b>	Payment
<b>Receipt Description:</b>	Payment
<b>Payor Name:</b>	Fountain, Roger

**Event Information**

<b>Event Description:</b>	Citation by Certified Mail
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<b>Date Added:</b>	June 25, 2021
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<b>Event Description:</b>	Citation by Certified Mail
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<b>Date Added:</b>	June 25, 2021
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<b>Event Description:</b>	Consent for Email Service
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<b>Date Added:</b>	June 25, 2021
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<b>Event Description:</b>	Original Petition Filed
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<b>Date Added:</b>	June 25, 2021
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<b>Event Description:</b>	Amended Petition Filed
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<b>Date Added:</b>	July 14, 2021
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<b>Event Description:</b>	Notice
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<b>Date Added:</b>	August 20, 2021
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**Bond Information****Judgment Information****Disclaimer**

Although Harris County Justice of the Peace Courts make every effort to ensure that information provided is accurate, neither Harris County nor any agency, officer, elected official or employee of Harris County, warrants the accuracy, reliability, or timeliness of any information on this web site and shall not be liable for any losses caused by such reliance on the accuracy, reliability or timeliness of such information, including, but not limited to incidental and consequential damages. This publication is provided "as is" without warranty of any kind, either expressed or implied, including, but not limited to, the implied warranties of merchantability, fitness for a particular purpose or non-infringement.

Any person who relies on information obtained from this website does so at his or her own risk. In addition, nothing contained within this web site is an official record of Harris County or the elected officials responsible therefore. All official records of Harris County and the offices of countywide elected officials are on file in their respective offices and may be reviewed by the public at those offices.

Please note: Because case status may change at any time, the case information displayed may not be accurate. If you have any questions about the case status shown, you should verify the information with the official case record.



# EXHIBIT A-3

CAUSE NO. 215100181847

ROGER FOUNTAIN.,	§	IN THE JUSTICE OF THE PEACE
	§	
Plaintiff,	§	
	§	
v.	§	PRECINCT 5, PLACE 1 OF
	§	
OPORTUN, INC.,	§	
	§	
Defendant.	§	HARRIS COUNTY, TEXAS

**NOTICE OF FILING NOTICE OF REMOVAL**

Defendant Oportun, Inc., by and through undersigned counsel, hereby gives notice that, pursuant to 28 U.S.C. §§ 1331, 1441, and 1446, a Notice of Removal has been filed in the United States District Court for the Southern District of Texas, Houston Division. A copy of the Notice of Removal is attached hereto as **Exhibit A**. Accordingly, no further proceedings should be had on this matter in this Court.



Respectfully submitted,

FOX ROTHSCHILD LLP

By: /s/ C. Dunham Biles

C. Dunham Biles

Texas Bar No. 24042407

[cbiles@foxrothschild.com](mailto:cbiles@foxrothschild.com)

Adam C. Ragan

Texas Bar No. 24079172

[aragan@foxrothschild.com](mailto:aragan@foxrothschild.com)

FOX ROTHSCHILD LLP

Saint Ann Court

2501 N. Harwood St., Suite 1800

Dallas, TX 75201

Phone: (972) 991-0889

Fax: (972) 404-0516

*Attorneys for Defendant*

**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing Notice of Filing of Notice of Removal was served on all parties and counsel of record via first-class certified mail and e-mail in accordance with the Texas Rules of Civil Procedure on September 3, 2021.

Roger Fountain  
8546 Hwy 6 N #419  
Houston, TX 77095  
(972) 890-4059  
[rcfountain@live.com](mailto:rcfountain@live.com)  
*Pro Se Plaintiff*

/s/ C. Dunham Biles

C. Dunham Biles